BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 90-626-C - ORDER NO. 91-866

OCTOBER 2, 1991

IN RE: Application of Southern Bell Telephone & Telegraph Company to Avail itself of Incentive Regulation of its Intrastate Operations.	)))))	ORDER ADDRESSING PETITIONS FOR RECONSIDERATION AND REHEARING

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of separate Petitions for clarification, rehearing, and reconsideration filed on behalf of South Carolina Cable Television Association (SCCTA) and Steven W. Hamm, Consumer Advocate for the State of South Carolina (the Consumer Advocate). While the parties separately filed their Petitions, the Commission will address within this Order the various requests for clarification, reconsideration and rehearing.

PETITION FOR REHEARING AND RECONSIDERATION OF THE SCCTA

The SCCTA asserts several allegations of error on the part of the Commission. The SCCTA contends that the Legislature, through the enactment of the S.C. Code Ann. §58-9-330 (1976) which specifies the method for sharing additional profits, has foreclosed the Commission from allowing shared earnings without evidence of economies and improvements in services. The SCCTA misconstrues the Commission's Order. The points raised by the SCCTA in its Petition

for Rehearing and Reconsideration are well taken by the Commission. In fact, the Commission, in theory, agrees with the issues raised by the SCCTA regarding its concerns that Southern Bell must demonstrate improved efficiencies and productivity before being allowed to share in additional profits. The procedure that the Commission has established in Order No. 91-595 and in the previous generic incentive regulation orders set forth the guidelines that the LEC participating in an incentive regulation plan must use to show to the Commission its efficiencies and productivity. Concommittantly, these same guidelines are used by the Commission to judge the performance of the participating local exchange company. It is the Commission's ruling that unless any additional earnings are shown to be as a result of a company's improved efficiencies and productivity, it will not be allowed to retain or share those earnings with its ratepayers. Instead, the additional earnings will be returned to its ratepayers with interest. The procedure outlined by the Commission is in full concert with §58-9-330 and with the case law in South Carolina. Moreover, the Commission has stated in Order No. 91-595 that exogenous factors would be eliminated so that they would not impact the earnings to be judged by the Commission.

Whether or not Southern Bell's original proposal or its witnesses in the hearing have a different idea about improved efficiencies and productivity, the Commission's Order in this matter forms the basis for any implementation of an incentive plan by Southern Bell. Therefore, as Order No. 91-595 ably states, if

earnings over the benchmark are not as a result of increased efficiencies or productivity, the Company is not entitled to keep those additional earnings. As further stated in the previous Order No. 90-1009, the participating LEC has the burden of demonstrating increased efficiencies in productivity.

The SCCTA next alleges that the Commission erroneously failed to address whether the ratepayers would benefit from the adoption of Southern Bell's incentive regulation plan. According to the SCCTA, this contravenes the determination in the generic proceeding that, "the foremost consideration is the protection of the using and consuming public" (Order No. 90-1009, p.5) and that any incentive regulation should "encourage the utility to operate more efficiently, thereby benefiting the ratepayers." Id., p. 19. First, the SCCTA takes the Commission's quotes from Order No. 90-1009 out of context. However, the Commission did, in the generic proceeding, determine that the benefits to the ratepayers should be considered. The Commission found that incentive regulation could achieve the enhancement of economic development; stable, affordable rates; the prompt introduction of innovative services; reduced cost of service. Order No. 90-849, p. 6 quoted in Order No. 90-1009, p. 4. The Commission has already determined then, in the generic docket, that ratepayers would benefit from incentive regulation. To that end, the Commission established certain safeguards in Docket No. 90-266-C, which were further refined in the instant Docket via the guidelines proposed by the Commission Staff and adopted in a modified version by the Commission. Under the

guidelines adopted by the Commission in the instant Docket and those set forth in Docket No. 90-266-C, not only will the benefits of incentive regulation flow to the ratepayer, the ratepayer will be protected in the event that additional earnings are not as a result of the Company's improved efficiencies and productivity. The SCCTA failed to take into consideration the Commission's findings and conclusions in the generic docket. Therefore, this particular issue raised by the SCCTA is not a proper issue to be addressed in the instant Docket since it was dealt with in Docket No. 90-266-C.

Next, the SCCTA alleges that the Commission erroneously concluded that Southern Bell was not required to present evidence as to the level of competition it faced in particular markets, because the competition issue had been previously determined in the generic proceeding. The SCCTA is merely disagreeing with the Commission as to whether or not Southern Bell had any further burden of proof as to competition after the generic proceeding established that competition exists and affected all local exchange companies in a general sense. The SCCTA is wrong on this point. Once the Commission established that competition existed in a generic or general sense and affected every LEC, the Commission went on to determine that there was sufficient competition to warrant consideration of a change in the traditional regulatory methodology. Additionally, SCCTA takes issue with the fact that even though the LEC's as a group may have experienced competition in the generic sense, that does not necessarily mean that Southern

Bell faces competition to the extent that an alternative form of regulation is warranted. The Commission is of the opinion, however, that its generic orders in Docket No. 90-266-C, put the issue of competition in the marketplace to rest. The Commission, having established that competition exists in a general sense and allowing the local exchange companies to file for incentive regulation treatment, would not further require a local exchange company to prove specific instances of competition. However, even though Southern Bell was not required to prove the existence of competition in its marketplace, Southern Bell did provide sufficient evidence of such. The Commission relies on its clarification of Order No. 91-595 as stated in Order No. 91-865, issued September 30, 1991. Order No. 91-595 adequately addresses the issue of competition in this matter. Therefore, SCCTA's Petition in this regard is insufficient to warrant reconsideration or rehearing of this matter. The SCCTA also contends that there is a lack of evidence concerning how competition has had an impact on Southern Bell's profitability. Based on the Commission's determinations in the generic proceeding and in the instant Docket, the Commission has determined that such a showing is not required. Therefore, the SCCTA's allegation in this regard does not merit reconsideration or rehearing.

The SCCTA contends that there has been no direct evidence or testimony explaining how earnings above a spot rate of return will allow Southern Bell to better compete. Again, the SCCTA is taking issues with matters that were established in the generic Dockets

and were adequately addressed therein. The concerns of the SCCTA and this portion of its Petition have been addressed by the Commission. The guidelines approved by the Commission in this Docket, as well as those approved in the generic proceeding, will allow for a review of the Company's earnings in a year's time and a determination will be made at that time as to whether or not those earnings were a result of the Company's efficiencies or productivity.

The SCCTA's next allegation of error concerning the problem with pricing flexibility and cross-subsidization will be addressed in the portion of the Order addressing the Consumer Advocate's Petition for Rehearing and Reconsideration.

Further, the SCCTA contends that the Commission's approval of allowing Southern Bell to retain earnings in excess of the benchmark violates S.C. Code Ann. §§58-9-210, 540, and 570 (1976 and Supp. 1990). However, as is adequately addressed in Order No. 91-595, the Commission's procedure and guidelines in judging a Company's earnings under incentive regulation complies with and is in concert with S.C. Code Ann. §58-9-210, 540, and 570. The Commission's interpretation of statutes it is charged with enforcing and administering should be given due deference.

Additionally, the SCCTA contends that the Commission erred in finding that the benchmark rate of return of 13.00% was fair and reasonable. The SCCTA contends that both witnesses Legler and Rhyne testified to lower point values. However, the 13.00% rate of return on equity found fair and reasonable by the Commission was

supported by the testimony of both witnesses Legler and Rhyne and is within the range of returns recommended by those witnesses. The issues raised as to the accounting adjustments by the SCCTA merely disagree with the findings of the Commission in that regard. The accounting adjustments approved by the Commission are fully supported by the substantial evidence and should not be reheard or reconsidered.

PETITION FOR REHEARING AND RECONSIDERATION OF THE CONSUMER ADVOCATE

The Consumer Advocate asserts several allegations of error on the part of the Commission in Order No. 91-595. First, the Consumer Advocate takes issue with the Commission's finding that an individual LEC did not have the burden of proving the existence and impact of competition on its operations after the Commission found that there was sufficient competition affecting the LEC's in the generic Docket (Docket No. 90-266-C). The Consumer Advocate asserts in the instant Docket that there has been no evidence introduced in either proceeding to prove the impact of competition. In Order No. 91-595, the Commission found that it is "not necessary to quantify the level of competition or the loss of revenues. The generic proceeding determined the competition issue, and neither Order No. 90-849, nor Order No. 90-1009, required further showing by any LEC of the effects of competition." Order No. 91-595, p.9. The generic proceeding which established the earnings sharing plan determined that all LEC's were impacted by competition. The Commission found that there was "sufficient competition" to warrant

a change in the traditional regulatory methodology. The Consumer Advocate disagrees with the Commission that there must be some quantification of competition in order to support a finding of a competitive environment. However, as the Commission has previously stated, the competition issue was put to rest in the generic docket and that no LEC was under the obligation to prove again the existence and impact of competition on its operations when applying for incentive regulation treatment. Therefore, the Consumer Advocate's contentions that the Commission's decision lacks findings of fact supported by substantial evidence of record is erroneous and does not warrant further rehearing or reconsideration by the Commission.

Next, the Consumer Advocate takes issue with the Commission's rejection of the proposal set forth by Consumer Advocate witness Buckalew to require the Company to file its embedded direct cost analysis for service categories on an annual basis. The Commission stated in Order No. 91-595 that this issue appeared to be more properly addressed in a forum other than incentive regulation, and that the Commission did not intend to evaluate the issue of cross-subsidization in this Docket. After a review of the Consumer Advocate's Petition and the issues raised concerning the embedded direct cost analysis, the Commission finds that it should reconsider its previous finding which rejected the Consumer Advocate's request to require Southern Bell to provide embedded direct cost analysis. The embedded direct cost analysis recommended by witness Buckalew would be an additional requirement

which would aid in determining the issue of whether or not there is any cross-subsidization as a result of the Company's operations under an earnings sharing plan. Additionally, no party objected to the use of the cost studies called for by the Consumer Advocate. The Commission agrees with the Consumer Advocate that with these studies, the Commission will be better able to achieve its stated goal of insuring that basic exchange ratepayers should see some benefit from incentive regulation. The Commission sees no need for a separate proceeding to address cross-subsidization at this time. By requiring the Company to file an embedded direct cost analysis on an annual basis by service category, the Commission will be provided with the information to determine the proper pricing of LEC services.

Finally, the Consumer Advocate takes issue with the Commission's finding regarding the return on equity for Southern Bell of 13.00%. The Consumer Advocate points out that the Commission declined to consider the updated figures of Staff Witness Rhyne in making its determination, in spite of overruling Southern Bell's objection to the introduction of those figures. The Consumer Advocate points out that updates are appropriate to a regulatory proceeding and are relevant imput for the Commission's decision-making process. The Commission has considered the Consumer Advocate's argument in this regard. However, in determining that the appropriate rate of return on equity should be 13.00%, the Commission could have relied on either Dr. Rhyne's update or his prefiled testimony recommendation. Dr. Rhyne initially recommended

in his prefiled testimony that the allowable return on equity portion of the ratebase for Southern Bell of South Carolina operations falls within a range from 12.50% to 13.50%. TR. Vol. 6, p. 106. In his update, Dr. Rhyne determined that the appropriate cost of equity for BellSouth's regulated telecommunications operations within South Carolina would fall within a broad range of 12.50% to 13.25%, with the best estimate falling between 12.50% and 13.00%. Obviously, the Commission's determination of a 13.00% return on equity is within the range of both Dr. Rhyne's prefiled testimony and his update. The Commission did not need to go as far as Dr. Rhyne's update to find that the appropriate cost of equity was 13.00%. Therefore, the Commission need not address the issue of the propriety of adopting Dr. Rhyne's updated testimony since it did not need to rely on it to make its finding.

Having addressed the issues raised by both the SCCTA and the Consumer Advocate, the Commission finds that as to the issues raised by the SCCTA, its Petition for Rehearing and Reconsideration should be denied. However, the Commission has reconsidered its findings concerning the embedded direct cost analysis which should be filed on an annual basis by specific categories on behalf of

Southern Bell. The other issues raised on reconsideration by the Consumer Advocate are hereby denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Marjorie Amos-Frazier
Chairman

ATTEST:

Executive Director

(SEAL)